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No. 86-1972

In the Supreme Court of the United States

October Term, 1986

NATIONAL FOOTBALL LEAGUE, et al.,

Petitioners,

v.

OAKLAND RAIDERS, LTD. AND LOS ANGELES MEMORIAL COLISEUM COMMISSION,

Respondents.

BRIEF OF RESPONDENT LOS ANGELES MEMORIAL COLISEUM COMMISSION IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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STATEMENT OF THE CASE

The Los Angeles Memorial Coliseum Commission ("Coliseum") commenced this litigation in September 1978 in response to the decision of the Los Angeles Rams ("Rams") to abandon the Coliseum and relocate to the Big "A" Stadium in the City of Anaheim. (53a.) Facing financial ruin because of the departure of its major tenant, the Coliseum filed suit against the National Football League and its member clubs (hereinafter "NFL") to enjoin the enforcement of Rule 4.3 of the NFL Constitution and By-Laws. (*Id.*)

As of September 1978, Rule 4.3 provided that a club owner seeking to transfer to a "neutral territory" had to obtain approval of three-fourths of the other NFL owners. (54a.) However, if the owner intended to move into another owner's home territory, the vote of approval had to be unanimous. (*Id.*) Since the Coliseum was located in the Rams' territory, the unanimous vote requirements of this rule threatened to be an insurmountable obstacle to the Coliseum in obtaining an NFL team to replace the Rams. (53a.)

Three weeks after the Coliseum filed its complaint, the NFL owners met in Chicago and voted to amend Rule 4.3 to eliminate the telltale double standard requiring unanimous approval for some team relocations and three-fourths votes for others. (53a-54a.) As amended, Rule 4.3 required that any move would be subject to approval by three-fourths of the owners. (54a.)

Rule 4.3 had been in the NFL Constitution since at least the 1930's. (73a.) The evidence at trial demonstrated that historically the purpose of the rule was to protect one NFL team from economic competition with another team in the same territory. (*Id.*) The evidence also revealed that the owners amended Rule 4.3, not because its historic purpose was abandoned, but because they were told by the Commissioner and his attorneys that the NFL could not defend the unanimous rule against the Coliseum's lawsuit. One owner recorded that the vote on the amended rule was intended to "negate" the Coliseum's lawsuit.

In March 1980, the then Oakland Raiders ("Raiders") announced their intention, beginning with the 1980 season, to play their home games in the Coliseum. (54a.) In response to the announced relocation, the NFL refused to schedule Raiders' home games in Los Angeles,

voted under Rule 4.3 to disapprove the Raiders' relocation and secured an injunction from a state court in Oakland prohibiting the Raiders' move. (54a-55a.) As a result, the Raiders played their home games in 1980 and 1981 in Oakland and the respondent Coliseum remained without an NFL tenant.

The NFL's refusal to permit the Raiders to play their home games in the Coliseum for the 1980 and 1981 seasons adversely affected competition in two identifiable market segments: (1) competition was eliminated between the Raiders and the Rams in connection with gate receipts revenues, radio broadcasting revenues, preseason television broadcasting revenues, merchandise revenues, employment of players, coaches, scouts and administrative personnel; and (2) competition for an NFL tenant was eliminated between the Coliseum and the Oakland-Alameda County Coliseum. (13a.)

In a bifurcated trial on the issue of liability, a jury found that the NFL's prohibition of the Raiders' move to the Coliseum violated Section 1 of the Sherman Act. (55a.) On June 14, 1982, the district court entered a permanent injunction prohibiting the NFL from interfering with the Raiders' relocation to the Coliseum.[1] (127a at ¶ 2.) The Ninth Circuit affirmed the district court and this Court denied *certiorari*. *Los Angeles Memorial Coliseum Commission v. National Football League*, 726 F.2d 1381 (9th Cir.) ("*Raiders I*"), *cert. denied sub nom. National Football League v. Oakland Raiders, Ltd.*, 469 U.S. 990 (1984).

The damages trial was completed in May 1983, with the jury assessing damages in favor of both the Raiders

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[1]The decree did not enjoin the NFL from preventing the Raiders' relocation to any other stadium. Since 1982 the Raiders have played their home games in the Coliseum.

and the Coliseum. (2a.) The Ninth Circuit, in a separate opinion, rejected the NFL's contention that the Coliseum lacked standing and unanimously affirmed the judgment as to the Coliseum. *Los Angeles Memorial Coliseum Commission v. National Football League*, 791 F.2d 1356 (9th Cir. 1986) ("*Raiders II*"). Petition for rehearing and *en banc* hearing was denied on March 12, 1987. (45a-46a.)

REASONS FOR DENYING THE WRIT OF CERTIORARI

Both *Raiders I* and *Raiders II*, as fact-sensitive inquiries, were properly decided and have little or no precedential value. The legal principles applied in these cases are faithful to the mandates of this Court and are consistent with the decisions of other circuits. Accordingly, *certiorari* is inappropriate and should be denied.

The NFL revisits two arguments upon which this Court has previously denied *certiorari*[2] — its single entity defense and its assertion of *per se* legality under the doctrine of ancillary restraints. Contrary to the NFL's contention in its petition, no decision of this or any other court since the original denial of *certiorari* dictates a different outcome.[3] Nor does the NFL's singular new

[2]The Coliseum adopts, without repetition, the Raiders' principal position in their Opposition to Certiorari: this Court's original denial of *certiorari* should be regarded as preclusive on every issue, except standing, that the NFL has asserted in its petition. Nevertheless, the Coliseum will respond to all of the NFL's arguments as if raised for the first time.

[3]Over the past decade this Court has signaled a retreat from the formalistic resolution of antitrust issues advocated by the NFL. Instead, this Court has opted for a case-by-case analysis of the defendant's conduct and its impact on competition. *See FTC v. Indiana Federation of Dentists*, ___ U.S. ___, 106 S. Ct. 2009 (1986); *Northwest Wholesale Stationers, Inc. v. Pacific Stationery & Printing Co.*, 472 U.S. 284 (1985); *National Collegiate Athletic*

argument in favor of *certiorari*, *Raiders II*'s finding of antitrust standing for the Coliseum, justify grant of the writ. As evident from that opinion, the Ninth Circuit performed an intensive factual examination of antitrust standing under the guidelines established in *Associated General Contractors, Inc. v. California State Council of Carpenters*, 459 U.S. 519 (1983), and properly concluded that the Coliseum had standing to sue.

Certiorari is inappropriate in cases where, as here, resolution depends on particular facts rather than legal principles. *Raiders I* merely held that a reasonable jury could have found that the NFL's actions to prevent the relocation of a member team to Los Angeles were an unreasonable restraint of trade. *Raiders II* simply concluded that the Coliseum had antitrust standing within the context of this narrowly defined violation. As limited to the particular facts of a single incident, both *Raiders I and II* have little, if any, precedential value — even within the Ninth Circuit. *Certiorari*, therefore, should be denied.

I.

THE NFL IS NOT A SINGLE ENTITY INCAPABLE OF CONSPIRING TO VIOLATE SECTION 1.

The NFL identifies three "errors" in the *Raiders* opinions which it argues justify the granting of a writ of *certiorari*. The NFL first objects to the Ninth Circuit's affirmance in *Raiders I* of the district court's ruling

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Association v. Board of Regents of the University of Oklahoma, 468 U.S. 85 (1984); *Broadcast Music, Inc. v. Columbia Broadcasting System, Inc.*, 441 U.S. 1 (1979); *National Society of Professional Engineers v. United States*, 435 U.S. 679 (1978). It is precisely this case-controlled approach that the Ninth Circuit employed in both *Raiders I and II*.

rejecting the NFL's single entity defense. Although fully briefed in the previous petitions for *certiorari*, the NFL revisits its argument that this Court's ruling in *Copperweld Corp. v. Independence Tube Corp.*, 467 U.S. 752 (1984), supports its contention that the NFL, as a single corporate enterprise, is incapable of conspiring under Section 1 of the Sherman Act.

Contrary to the NFL's all-encompassing reading of *Copperweld*, that case addressed only the narrow issue of intraenterprise conspiracy. *Id.* at 759, 767. Relying on the identity of interests between a parent and its wholly-owned subsidiary, this Court held those entities legally incapable of conspiring with each other for purposes of Section 1 of the Sherman Act. The essence of the holding was that a parent and its subsidiary are a single firm, rather than independent sources of economic power pursuing separate interests. *Id.* at 771.

By contrast in the present case, the combination was among separately owned and operated businesses.[4] (63a.) Each NFL team is a separate unit of economic power pursuing its own business interests.[5] The NFL clubs do

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[4]In fact, the NFL Constitution forbids an owner from having any financial interest in any other NFL team. Each NFL team is a separate legal entity — some are structured as corporations, others are partnerships, and a few are sole proprietorships. (63a.)

[5]Glaringly absent from the petitioners' brief is an enumeration of the factual bases upon which they contend that these separate entities constitute a single "corporate enterprise." (Petitioners' Brief at 12.) The NFL relies, instead, merely on the lack of competition between these teams. (*Id.*) As discussed *infra* footnote 6, the factual record fails to support such a contention. As concluded by the Ninth Circuit, "[w]hile the NFL clubs have certain common purposes, they do not operate as a single entity. NFL policies are not set by one individual or parent corporation, but by the separate teams acting jointly." (61a.)

not share profits or losses. (*Id.*) In fact, there are wide variations in net profits among them. (*Id.*) The clubs do not share any revenues from local television, radio, concessions, merchandise sales, parking or private box rentals. (*Id.*) Nor do they share individual operating expenses, which vary widely from club to club. The clubs maintain separate books, records and financial statements, and do not exchange this data among themselves. Each NFL owner makes unilateral business decisions regarding ticket prices, player acquisitions, player salaries, hiring of coaching and administrative personnel, operating procedures, terms of stadium leases, negotiation of radio and pre-season television contracts and acquisition of physical facilities. No NFL club has any liability for the contractual obligations or debts of any other NFL club. (*Id.*)

Substantial competition exists between NFL teams.[6] (*Id.*) Because each NFL club has distinct economic interests, one club can frequently be at odds with one or more other clubs. Unlike the parent and subsidiary context of *Copperweld*, the record below showed that one NFL club by its independent business decisions can profit at the expense of another. It was precisely such a decision (the Raiders' effort to compete in the Rams' home territory) that precipitated the controversy in this case.

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[6]NFL clubs compete for players, coaches and management personnel (63a), a fact virtually conceded by the NFL. (Petitioners' Brief at 12 n.15.) In addition, in those areas of the country where two teams operate in close proximity, they compete for fan support, local television and radio revenues and media space. (63a.) As held in *Rothery Storage & Van Co. v. Atlas Van Lines, Inc.*, 792 F.2d 210, 215 (D.C. Cir. 1986), *cert. denied*, ___ U.S. ___, 107 S. Ct. 880 (1987), the rule of *Copperweld* does not apply in the presence of such actual or potential competition.

In reality, the NFL's single entity defense is nothing more than an attempt to have this Court insulate its collective activities from judicial review under the antitrust laws. Such an argument, however, has been rejected by this Court and by every other lower court to which it has been advanced.[7] Sports leagues are subject to the scrutiny of the antitrust laws, even though they must cooperate to produce games. *National Collegiate Athletic Association v. Board of Regents of the University of Oklahoma*, 468 U.S. 85 (1984); *North American Soccer League v. National Football League*, 670 F.2d 1249 (2d Cir.), *cert. denied*, 459 U.S. 1074 (1982); *Mackey v. National Football League*, 543 F.2d 606 (8th Cir. 1976), *cert. dismissed*, 434 U.S. 801 (1977); *Neeld v. National Hockey League*, 594 F.2d 1297 (9th Cir. 1979); *Smith v. Pro-Football, Inc.*, 593 F.2d 1173 (D.C. Cir. 1978); *Levin v. National Basketball Association*, 385 F. Supp. 149 (S.D.N.Y. 1974).

The application of Section 1 to sports leagues has posed little difficulty in the administration of the antitrust laws, certainly none which would justify the NFL's massive extension of *Copperweld* to exempt separate competitive entities from Section 1 liability. Contrary to the NFL's bold assertion that the rule of

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[7] In *North American Soccer League v. National Football League*, 670 F.2d 1249 (2d Cir.), *cert. denied*, 459 U.S. 1074 (1982), the Second Circuit clearly rejected this single entity defense. "To tolerate such a loophole would permit league members to escape antitrust responsibility for any restraint entered into by them that would benefit their league or enhance their ability to compete even though the benefit would be outweighed by its anticompetitive effects. Moreover, the restraint might be one adopted more for the protection of individual league members from competition than to help the league." *Id.* at 1257. The NFL's request for immunity should be — and indeed has been — addressed to Congress, not this Court.

reason is "unworkable," (Petitioners' Brief at 14), the interests and unique product attributes of sports leagues can be easily accommodated by the balancing of pro- and anticompetitive effects. Any blanket immunity of the kind advocated by the NFL is wholly unwarranted.

II.

THE RULE OF REASON WAS CORRECTLY APPLIED TO CONDUCT AT ISSUE IN *RAIDERS I.*

The second "error" assigned by the NFL to *Raiders I* centers on the Ninth Circuit's rule of reason analysis. The NFL states two objections. First, the NFL contends that the Ninth Circuit's refusal to apply a rule of *per se* legality to ancillary restraints, regardless of their anticompetitive effects, conflicts with Judge Bork's opinion in *Rothery Storage & Van Co. v. Atlas Van Lines, Inc.*, 792 F.2d 210 (D.C. Cir. 1986), *cert. denied*, ___ U.S. ___, 107 S. Ct. 880 (1987). Second, the NFL argues that the Ninth Circuit impermissibly ruled against it based solely on the "procedural defects" of Rule 4.3. Both of the NFL's arguments are incorrect and must be rejected.

The NFL asserts that the Ninth Circuit's application of the doctrine of ancillary restraints to the facts of *Raiders I* directly contradicts *Rothery*. No such conflict, however, exists. Just as in *Raiders I*, *Rothery* evaluated the ancillary restraints at issue in that case under the rule of reason. Despite *dicta* implying a presumptive standard of *per se* legality, Judge Bork in the final analysis balanced the absence of any anticompetitive effects resulting from the challenged conduct with its procompetitive attributes. *Id.* at 229 ("[A]n ancillary horizontal restraint . . . is to be judged according to

its purpose and effect."). Thus the analytical framework used by the courts for evaluating ancillary restraints in both *Raiders I* and *Rothery* is the same.

The different outcomes in *Rothery* and *Raiders I* are explained by their factual dissimilarities, not by a deviation in legal analysis. In *Rothery*, the challenged covenants preserved the efficiencies of the nationwide van line by eliminating the problem of the free ride. *Id.* at 212-13. There was, on the other hand, no possibility that the restraints could suppress market competition and decrease output, primarily because Atlas had less than a 6% market share. *Id.* at 229. Conversely, the court in *Raiders I* concluded that substantial evidence existed for the jury to find that the NFL's restraint on competition and reduction of output resulting from its prohibition of the Raiders' relocation outweighed any procompetitive benefits associated with such conduct. (75a-79a.)

The NFL also asserts that *Raiders I* is in derogation of this Court's ruling in *Northwest Wholesale Stationers, Inc. v. Pacific Stationery & Printing Co.*, 472 U.S. 284 (1985). Reading *Northwest Stationers* to afford *per se* legality to its "procedural" Rule 4.3, the NFL asserts that *Raiders I*, basing Section 1 liability solely on the procedural irregularity of that rule, must be reversed. (Petitioners' Brief at 18-19.)

The NFL's argument is incorrect both legally and factually. The passage from *Northwest Stationers* relied upon by petitioners at page 18 of their brief does not afford *per se* legality to procedural rules. Rather, the quoted passage simply states that (1) if a defendant's conduct does not violate §1, the failure to afford the plaintiff procedural protections is irrelevant, and (2) an

absence of procedural protections does not convert a rule of reason case into a *per se* case. 472 U.S. at 293. Where, as in the case of *Raiders I*, the defendants' conduct was held to violate Section 1 under a rule of reason analysis, the proscriptions of *Northwest Stationers* do not apply.

In addition to misconstruing *Northwest Stationers*, the NFL also mischaracterizes the Ninth Circuit's opinion in *Raiders I* as based solely on the "procedural deficiency" of Rule 4.3. *Raiders I* did not undertake an appraisal of the procedural aspects of Rule 4.3. Rather, as its enumerated findings demonstrate, the Ninth Circuit looked at the purpose and effect of Rule 4.3:

1. Rule 4.3 was a product of the owners' perceived need for territorial exclusivity. (73a.)

2. Its purpose was to restrain competition and the NFL "admitted as much at trial." (*Id.*)

3. Territorial exclusivity is patently anticompetitive and detrimental to consumers' interests. (75a.)

4. Direct competition between the Rams and Raiders was eliminated to the detriment of consumers. (*Id.*)

5. The relocation of the Raiders to Los Angeles would not have any harmful effect on the NFL in terms of scheduling, television, adequacy of facilities, etc. (77a-78a.)

6. Rule 4.3 "also effectively foreclosed free competition among stadia . . . that wish to secure NFL tenants." (75a.)

7. While Rule 4.3, in the abstract, may have some procompetitive features, "we nevertheless are not persuaded the jury should have concluded that Rule 4.3 is a reasonable restraint of trade" (76a), in part because

"[t]he same goals can be achieved in a variety of ways which are less harmful to competition."[8] (*Id.*)

Contrary to the NFL's characterization of *Raiders I*, the focus of the Ninth Circuit's inquiry was not on the procedural mechanisms of Rule 4.3, but rather the NFL's conduct in blocking the Raiders' move to the Coliseum. To the extent that Rule 4.3 was discussed, it was viewed as an enabling device for the NFL's unlawful enforcement of its policy of territorial exclusivity. Had the NFL refused to schedule the Raiders in Los Angeles and instituted state court litigation to enjoin the Raiders' move — even without voting to block the relocation under Rule 4.3 — the unlawful restraint would still have been accomplished and the outcome of the case would have been the same.

The Ninth Circuit, therefore, did not rest upon the "procedural deficiencies" of Rule 4.3 to affirm the jury's verdict. Instead, it found only that a jury could reasonably conclude that Rule 4.3, as applied to block the Raiders' move to the Coliseum, violated Section 1. As a narrowly defined inquiry into the legality of this

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[8]Much of petitioners' *Northwest Stationers* argument rests on the trial court's instruction concerning a "less restrictive alternative." (*See* Petitioners' Brief at 16-17.) It is axiomatic, however, that an examination of less restrictive alternatives is proper within the rule of reason. *Lektro-Vend Corp. v. Vendo Co.*, 660 F.2d 255, 265 (7th Cir. 1981), *cert. denied*, 455 U.S. 921 (1982); *Berkey Photo, Inc. v. Eastman Kodak Co.*, 603 F.2d 263, 303 (2d Cir. 1979), *cert. denied*, 444 U.S. 1093 (1980). There is no basis upon which the NFL can assert that the holding of the Court in *Northwest Stationers* intended to vitiate this aspect of rule of reason analysis. Indeed, Professor Areeda recently stated that in evaluating whether the restraint is reasonably necessary to achieve its procompetitive objectives, "there must not be a reasonable alternative for accomplishing the objective that restrains competition substantially less." Areeda, *The Rule of Reason — A Catechism on Competition*, 55 Antitrust L.J. 571, 581 (1987).

particular relocation, the precedential value of *Raiders I* is extremely limited. As expressly stated in *Raiders II*, "[w]e . . . thus construe the verdict [in *Raiders I*] to have held Rule 4.3 invalid only as it was applied to the Raiders' proposed move to Los Angeles."[9] (21a; *see also* 25a, 29a, and 32a.)

The limited precedential value of *Raiders I* has been recently underscored by the Ninth Circuit in a case involving the relocation of the Clippers basketball team from San Diego to Los Angeles. *National Basketball Association v. SDC Basketball Club, Inc.*, 815 F.2d 562 (9th Cir. 1987). In its decision reversing summary judgment for the Clippers, the Ninth Circuit rejected the district court's application of *Raiders I*. The Ninth Circuit held:

> *Raiders I* merely held that a reasonable jury could have found that the NFL's application of its franchise movement rule was an unreasonable restraint of trade. . . *Raiders II* confirmed that the jury's liability verdict affirmed in *Raiders I* "held Rule 4.3 [the franchise movement rule] invalid only as it was applied to the Raiders' proposed move to Los Angeles". . . The Clippers' and the Coliseum's efforts to characterize *Raiders I* as presenting guidelines for franchise movement rules are thus unavailing. *Neither the jury's verdict in Raiders, nor the court's affirmance of that verdict, held that a franchise movement rule,*

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[9] *Raiders II*'s description of the case is entirely consistent with the very narrow injunctive decree issued by the district court. That decree enjoined the NFL *only* from prohibiting the Raiders' relocation to the Coliseum. (127a at ¶ 2.)

> *in and of itself, was invalid under the antitrust laws.*

Id. at 567 (citations omitted) (emphasis added).

The court continued:

> [A] careful analysis of *Raiders I* makes it clear that franchise movement restrictions are not invalid as a matter of law . . . As we have demonstrated, antitrust analysis under *Raiders I* indicate that the question of what restraints are reasonable is one of fact.

Id. at 568.

As expressed repeatedly by the Ninth Circuit, *Raiders I* stands only for the singular proposition that the NFL's conduct in foreclosing the Raiders' relocation to the Coliseum constituted an unreasonable restraint of trade. As limited to the unique factual circumstances surrounding that particular move, *Raiders I* has little or no precedential value, even within the Ninth Circuit. Given this absence of precedential value, *certiorari* is wholly inappropriate and should be denied.

III.

THE COLISEUM WAS PROPERLY FOUND TO HAVE ANTITRUST STANDING.

The final "error" cited by the NFL is the Ninth Circuit's conclusion in *Raiders II* that the Coliseum had antitrust standing to challenge the defendants' conduct. In its only new argument in support of *certiorari*, the NFL asserts that the Ninth Circuit incorrectly analyzed the Coliseum's standing to sue and rendered a result inconsistent with cases in other circuits. Contrary to the NFL's contention, the Ninth Circuit faithfully applied the factors which this Court mandated in *Associated General Contractors*, 459 U.S. 519 (1983), and properly

concluded that the Coliseum had antitrust standing. Moreover, the NFL's purported need to reconcile *Raiders II* with the myriad of lower court decisions on antitrust standing is clearly unwarranted given this Court's declaration that it is:

> virtually impossible to announce a black-letter rule that will dictate the result in every case. Instead, previously decided cases identify factors that circumscribe and guide the exercise of judgment in deciding whether the law affords a remedy in specific circumstances.

Associated General Contractors, 459 U.S. at 536-37.

In *Raiders II* the Ninth Circuit carefully evaluated the Coliseum's harm, the NFL's conduct, and the relationship between them in order to determine that the Coliseum satisfied the standards of antitrust standing.[10] *Id.* at 535. Looking at the particular factors commended by this Court, the Ninth Circuit found that

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[10]The NFL, treating the Ninth Circuit as a naughty child unwilling to respect the authority of this Court, characterizes the standing analysis of *Raiders II* as "but the latest instance of the Ninth Circuit's resistance to the law respecting antitrust standing." (Petitioners' Brief at 22.) The NFL predictably bases its attack on the Ninth Circuit's decision in *Ostrofe v. H.S. Crocker Co.*, 740 F.2d 739 (9th Cir. 1984), *cert. dismissed*, 469 U.S. 1200 (1985). It is wholly inaccurate, however, for the NFL to claim that "*Ostrofe* was the principal authority cited by the Court of Appeals in this case for permitting the Coliseum to recover." (Petitioners' Brief at 22.) In fact, the standing opinion below mentions *Ostrofe* only once for the uncontroversial proposition that in analyzing the factors required under *Associated General Contractors, Inc. v. California State Council of Carpenters*, 459 U.S. 519 (1983), the court will normally "find some factors tending in favor of standing . . . and some against" and that the court's task is to balance those factors. (10a.) Even a cursory reading of the standing section of the Ninth Circuit's opinion reflects the court's commitment to follow the guidelines of *Associated General Contractors* — and it has done so.

"the Coliseum suffered both direct harm and antitrust injury as the result of the NFL's antitrust restraints." (13a.)

In examining the directness of the Coliseum's injury from the NFL's territorial restraints, the Ninth Circuit emphasized that the jury in *Raiders I* found that the NFL's refusal to permit the Raiders to play their home games in the Coliseum impaired competition not only in the NFL football market, but also in a separate "stadia market." (*Id.*) It was this distinct market of rival stadia in which the Coliseum was a competitor and in which competition was directly and quite foreseeably, if not also intentionally, restrained. (*Id.*) The Coliseum "was engaged in a bidding struggle with its Oakland counterpart for the tenancy of the Raiders and was injured when the NFL's application of its territorial restrictions foreclosed further undistorted negotiations." (*Id.*)

Applying another one of the components of the *Associated General Contractors* analysis, the Ninth Circuit observed that the Coliseum had suffered antitrust injury. (12a.) The court in *Raiders II* articulated two bases for its finding of antitrust injury. First, the NFL's unlawful restraint effectively foreclosed the Coliseum from competing with its stadia rivals for the tenancy of the Raiders. (13a.) The Coliseum's injury flowing from that reduction in competition satisfied the antitrust injury requirements of *Brunswick Corp. v. Pueblo Bowl-O-Mat, Inc.*, 429 U.S. 477 (1977). (13a.)

Second, wholly apart from its analysis of injury within the context of the stadia market, the court in *Raiders II* rejected the NFL's contention that the Coliseum could not prove antitrust injury based on a reduction in competition between the Raiders and Rams. Expressly stating that football stadia have an "indispensable and

intimate connection with professional football and football teams," (*id.*) the Ninth Circuit concluded that the Coliseum was inextricably intertwined with the Raiders' relocation. As such, it suffered cognizable antitrust injury from the NFL's prohibition of that move and its consequent elimination of competition between the Raiders and Rams. *See Blue Shield of Virginia v. McCready*, 457 U.S. 465, 483-84 (1982).

In accordance with the teaching and mandate of *Associated General Contractors, Raiders II* determined antitrust standing based on a fact-intensive analysis. Inherent in such a case-by-case approach is the inability to formulate a black-letter rule applicable to every situation. Yet, that is precisely what the NFL advocates. (Petitioners' Brief at 23.) Focusing upon the Sixth Circuit's analysis of standing in *Southaven Land Co. v. Malone & Hyde, Inc.*, 715 F.2d 1079 (6th Cir. 1983), the NFL urges this Court to retreat from the multifactor inquiry of *Associated General Contractors* and to substitute instead uniform rules. Such a request should be rejected.

The impossibility of adopting mechanistic formulations to determine antitrust standing is demonstrated forcefully by the NFL's reliance on *Southaven*. The facts presented in *Southaven* differ profoundly from those presented in *Raiders I* and compel a different outcome. In *Southaven*, the relevant market in which the defendant was alleged to have restrained trade was the retail grocery market of Southaven, Mississippi. *Id.* at 1086. In that market, the lessor-plaintiff was neither a "consumer, competitor nor participant." *Id.* Nor was Southaven's injury "inextricably intertwined" with that retail grocery market. It was not "manipulated or utilized by

[defendants] as a fulcrum, conduit or market force to injure competitors or participants." *Id.* As merely a lessor of retail premises capable of being used as a grocery store, Southaven failed to satisfy the requisite standards of antitrust standing.

The facts presented in *Raiders II* differ materially from those in *Southaven*. First, the Coliseum was a competitor in the stadia market, which the jury found in *Raiders I* to have been adversely affected by the NFL's conduct. (13a.) Second, the Ninth Circuit held that the Coliseum, a facility intimately connected with the Raiders' relocation, was inextricably affected by the NFL's restraint on competition between the Raiders and Rams. As such, the Coliseum satisfied the standing requirements of Clayton Act § 4. (*Id.*)

The different outcomes in *Southaven* and *Raiders II* are compelled by these factual dissimilarities. It is precisely the existence of such case-specific nuances that make the "black-letter" standing rule advocated by the NFL impossible to develop and employ.[11]

CONCLUSION

Certiorari should be denied. The NFL is not a single entity within the letter or spirit of *Copperweld*. Nor does the Ninth Circuit's application of the rule of reason conflict with either *Rothery* or *Northwest Stationers*. The liability holding of *Raiders I* is based not on "procedural deficiencies" in the NFL's relocation rule,

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[11]The NFL's argument that *Raiders II* unjustifiably broadens the standing requirement and will invite suits by persons too remote from the restraint was anticipated and expressly rejected by the Ninth Circuit in its opinion. "We are confident that our ruling will not be misinterpreted as being a broad endorsement of antitrust standing for all parties who might have contracted with the Raiders had they not been restrained in their relocation plans." (13a.)

but rather on the clear restraints on competition both at the Raiders/Rams level and the Oakland Coliseum/Los Angeles Coliseum level. Finally, the Ninth Circuit's conclusion that the Coliseum had antitrust standing to recover damages is wholly consistent with this Court's opinions in both *Associated General Contractors* and *McCready*. The Coliseum was directly impacted by the NFL's unlawful restraint both as a participant in the stadia market affected by Rule 4.3 and as a facility "inextricably intertwined" with the market for professional football. The Coliseum's injury was both foreseeable and intentional. *Associated General Contractors* envisions and demands resolution of standing issues on the particular facts of the case, forbidding mechanistic formulae. The court in *Raiders II* methodically executed its task and reached the proper conclusion.

Respectfully submitted,

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PROOF OF SERVICE BY MAIL

State of California

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County of Los Angeles

I am employed in the County of Los Angeles, State of California. I am over the age of 18, and not a party to the within action; my business address is 611 West Sixth Street, Suite 2800, Los Angeles, California 90017. I declare that I am employed in the office of a member of the bar at whose direction this service is made.

On July 9, 1987, I served the foregoing document described as *Brief of Respondent Los Angeles Memorial Coliseum Commission in Opposition to Petition for Writ of Certiorari* on the parties herein in this action by placing three true copies thereof enclosed in a sealed envelope with postage thereon fully prepaid, in the United States mail at Los Angeles, California, addressed as follows:

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I declare under penalty of perjury that the above is true and correct. Executed this 9th day of July, 1987, at Los Angeles, California.

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(Original signed)